

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PLANNING AND PERMITTING

Adoption of Title 20, Chapter 26
City and County of Honolulu Administrative Rules

_____, 2022

CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

TITLE 20

DEPARTMENT OF PLANNING AND PERMITTING

CHAPTER 26

GENERAL EXCISE TAX EXEMPTIONS

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SUBCHAPTER 1

GENERAL PROVISIONS

§20-26-1 Purpose. This chapter implements sections 46-15.1, 201H-36, and 237-29, HRS, regarding general excise tax exemptions for qualified persons and firms involved in providing low and moderate income housing. [Eff _____] (Auth: HRS §§46-15.1, 237-29) (Imp: HRS §§46-15.1, 201H-36, 237-29)

§20-26-2 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Allowable construction costs" means expenses incurred by a contractor, for contracting, services and materials which are to be incorporated (in such a form as to be perceptible to the senses) into, or used completely by the contractor in, the development and construction of real property improvements and fixtures for a newly constructed, or moderately or substantially rehabilitated eligible housing project that are associated with the residential portion of the project, or that are de minimis non-residential uses within the project.

"Allowable development costs" means amounts incurred by a developer or a contractor for contracting, services, and materials that are used for the planning, development, and construction of a newly constructed, or moderately or substantially rehabilitated, eligible housing project that are associated with the residential portion of the project, or that are de minimis nonresidential uses within the project.

"Allowable financing costs" means:

- (1) Amounts paid by a developer or owner to the holder of any debt instrument secured by the leasehold or fee simple interest of the developer or owner in an eligible housing

project, and to qualified persons or firms in connection with obtaining or administering such financing; and

- (2) Interest earned by a developer or owner on construction loan funds; that are associated with the residential portion of the project, or that are de minimis non-residential uses within the project.

"AMI" means the area median income adjusted for household size, as determined annually by HUD for the Honolulu Metropolitan Statistical Area and published by the department annually.

"City" means the city and county of Honolulu.

"Claimant" means a person or firm filing a claim with the department for general excise tax exemptions allowed under section 46-15.1, HRS.

"Contractor" means a person defined as a contractor under section 237-6, HRS.

"De minimis non-residential uses" means non-residential use or commercial use areas within a project, including parking areas set aside for these uses required by zoning regulations or other government approvals, that are not directly related to the provision of housing, are intended to directly benefit the residents of the housing project, and do not exceed a maximum of two percent of a project's gross residential floor area.

"Department" means the city and county of Honolulu department of planning and permitting, or its designee.

"Developed under the sponsorship of a private nonprofit corporation" means a newly constructed, or moderately or substantially rehabilitated housing project developed under a program qualified by the department and sponsored by a private nonprofit corporation whose purpose is the provision of affordable housing.

"Eligible housing project" means:

- (1) A rental housing project by a qualified person or firm where at least fifty percent (50%) of the available units are for households with incomes at or below eighty percent (80%) of the AMI, of which at least

- twenty percent (20%) of the available units are for households with incomes at or below sixty percent (60%) of the AMI; or
- (2) A rental or for-sale housing project which is developed under a housing development program pursuant to part II of chapter 201H, HRS, including the department's rules implementing the same;
 - (3) A rental or for-sale housing project which is developed or acquired for the provision of affordable housing under a government assistance program approved by the department; or
 - (4) A rental or for-sale housing project developed under the sponsorship of a private nonprofit corporation.

"Eligible housing project" may include de minimis non-residential uses that are intended to directly benefit the residents of the housing project. Notwithstanding any of the provisions herein, no project shall be an "eligible housing project" unless that project is a "low- and moderate-income housing project" as defined by section 39A-281, HRS.

"Government assistance program" means any housing program qualified by the department and administered or operated by the State, the City, the United States, or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development and acquisition for the provision of affordable housing for qualified persons in the State. "Government assistance program" includes, but is not limited to, the United States Department of Agriculture's 502 and 515 programs; the Federal Housing Administration's 235 program; the United States Department of Housing and Urban Development's HOME, HOPE, 202, and 811 programs; the section 802 military housing program; the military construction and family housing program; the military housing privatization initiative program; the low income housing tax credit program; the HHFDC's rental housing revolving fund program; the HHFDC's rental assistance

program; the HHFDC's dwelling unit revolving fund program; tax exempt or taxable multi-family bond financing programs administered by the HHFDC or the City; the acquisition of land and existing structures for the provision of affordable housing, for which the legislature has appropriated or otherwise authorized funding; residential projects developed by the department of Hawaiian home lands; residential projects developed by the Hawaii public housing authority; and the City's affordable rental housing program under ROH Chapter 42.

"HHFDC" means the Hawaii housing finance and development corporation of the state of Hawaii.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States Department of Housing and Urban Development.

"Limited distribution mortgagor" means an entity which may consist of a person, partnership, association, or limited liability partnership and company which has executed with the federal, state, or county agency a regulatory agreement as to rents, charges, profits, dividends, development costs, and methods of operation.

"Moderate rehabilitation" means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

"Non de minimis development costs" means the cost to construct the non de minimis use area in a project. Non de minimis development costs are not considered "allowable development costs."

- (1) If the project's non de minimis use area does not have unfinished commercial construction specifications (i.e., "shell" space which is substantially unfinished and intended to be built out by or for a commercial tenant, as determined by HHFDC in its sole discretion), "non de minimis development costs" shall be calculated by using the ratio of the project's non de minimis use area including associated parking areas to the project's total area, multiplied by the total

development cost excluding any offsite development costs.

- (2) Alternatively, projects with non de minimis use area with unfinished commercial construction specifications may opt to calculate the non de minimis development costs by multiplying the non de minimis use area by one hundred sixty dollars (\$160.00) per square foot. This multiplier shall be adjusted annually each July 1 using the consumer price index series title: all items in U.S. city average, all urban consumers, not seasonally adjusted, for the month of April published by the U.S. Department of Labor, Bureau of Labor Statistics.
- (3) If the project contains a mixture of finished and unfinished commercial areas, only the unfinished commercial areas may use the alternative calculation method.

"Non de minimis use area" means the floor area of a project, plus associated parking areas, that is not directly related to the provision of housing for the project and is not de minimis non-residential use.

"Nonprofit corporation" means a corporation incorporated under chapter 414D, HRS.

"Qualified person or firm" means an individual, partnership, joint venture, corporation, association, limited liability partnership, limited liability company, business, trust, or any organized group of persons or legal entities, or any combination thereof, which possesses all professional or vocational licenses necessary to do business in the State and the City in conjunction with the planning, design, financing, construction (including materials and supplies for new construction, moderate rehabilitation, and substantial rehabilitation), sale, or rental of eligible housing projects.

"Regulatory agreement" means the agreement under which projects shall be regulated by the department, in a published format determined by the department and recorded in the bureau of conveyances of the state of Hawaii or the office of the assistant registrar of

the land court of the state of Hawaii, including, but not limited to, a development agreement, deed restriction, other recorded written agreement or determination that the claimant's project is legally bound to the affordability requirements as set out in the application or applications with the department or other governmental agencies, whichever is applicable. A regulatory agreement shall include, but is not limited to, the right of the department to recapture a proportionate share of the approximate project construction cost savings from the exemption from general excise taxes if the project's units do not remain restricted for income-qualified tenants for the full remaining term of the regulatory agreement, and such additional covenants and restrictions as may be determined necessary by the department on a case-by-case basis.

"ROH" means the Revised Ordinances of Honolulu, 1990, as amended.

"Staff" means the employed personnel of the department.

"State" means the State of Hawaii.

"Substantial rehabilitation" means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. Substantial rehabilitation also includes rehabilitation activity that is necessary to correct substandard conditions, to make essential improvements, and to repair major systems in danger of failure. The term "major systems" includes, but is not limited to, such items as roof structures, ceiling, wall or floor structures, foundations, elevators, and plumbing or electrical repair, replacement, or in some cases removal. Substantial rehabilitation activities also include energy and other natural resource conservation-related repairs and improvements, as well as improvements required to

provide access or added safety for the handicapped or elderly and renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders).
[Eff _____] (Auth: HRS §§46-15.1, 237-29)
(Imp: HRS §§46-15.1, 201H-36, 237-29)

§20-26-3 Fees. The department shall charge the following fees:

- (1) Application for exemption of an eligible housing project and claimant: fee to be established by ordinance effective at the time of application, to be adjusted annually each July 1 using the consumer price index series title: all items in U.S. city average, all urban consumers, not seasonally adjusted, for the month of April published by the U.S. Department of Labor, Bureau of Labor Statistics. The department shall post any fee changes on its website;
- (2) Subsequent applications for certification of claimants of an eligible housing project: fee to be established by ordinance effective at the time of application, to be adjusted annually each July 1 using the consumer price index series title: all items in U.S. city average, all urban consumers, not seasonally adjusted, for the month of April published by the U.S. Department of Labor, Bureau of Labor Statistics. The department shall post any fee changes on its website;
- (3) Application for annual certification of rental income generated by an eligible housing project: fee to be established by ordinance effective at the time of application, to be adjusted annually each July 1 using the consumer price index series title: all items in U.S. city average, all urban consumers, not seasonally adjusted,

for the month of April published by the U.S. Department of Labor, Bureau of Labor Statistics. The department shall post any fee changes on its website; and

- (4) A reasonable annual compliance monitoring fee established by ordinance may be charged to cover administrative expenses. It will be the responsibility of the department or its designated representative to inform the project owner of any changes in the annual compliance fee. The fee may be adjusted annually each July 1. [Eff] (Auth: HRS §§46-15.1, 237-29) (Imp: HRS §§46-15.1, 237-29, 201H-36)

SUBCHAPTER 2

CERTIFICATION OF PERSONS AND FIRMS

§20-26-11 Types of income eligible for exemption. (a) All gross income received by any qualified person or firm as allowable development costs, allowable construction costs, or allowable financing costs for the planning, design, financing, construction, sale, or lease in the City of an eligible housing project that has been certified pursuant to these rules shall be exempt from general excise taxes.

(b) All gross income received by a nonprofit corporation or a limited distribution mortgagor as allowable development costs, allowable construction costs, or allowable financing costs for low- or moderate-income eligible housing project that has been certified pursuant to these rules shall be exempt from general excise taxes. [Eff] (Auth: HRS §§46-15.1, 237-29) (Imp: HRS §§46-15.1, 237-29)

§20-26-12 Application for certification of newly constructed or rehabilitated housing projects.

When an exemption from general excise taxes is requested by a claimant involved with a newly constructed or rehabilitated housing project, the following shall apply.

- (1) The developer or general contractor of an eligible housing project shall submit to the department completed general excise tax exemption claims (department of taxation form G-37) on behalf of any subcontractors, material houses, real estate sales agencies, or other firms involved with the planning, design, financing, construction, or sale of the housing project;
- (2) Along with the claim forms, the developer or general contractor shall submit to the department the following information on the eligible housing project:
 - (A) A description of the eligible housing project, including the number of affordable housing units and the percent of AMI for which those units are affordable;
 - (B) Authorization for the department to conduct on-site inspections of the affordable housing project;
 - (C) A cover letter requesting the tax exemption, which includes the following:
 - (i) A list of qualified persons or firms previously granted or currently claiming an exemption; and
 - (ii) Contract amounts for each of the qualified persons or firms; and
 - (D) Any additional information necessary for the department to make a determination; and
- (3) Upon receipt, staff of the department shall time stamp the claim form.
 - (A) If the person or firm is found to be eligible under these rules, staff shall

within thirty calendar days of receipt, so notify the claimant in writing.

- (B) If a person or entity is found to be ineligible under these rules, staff shall, within thirty calendar days of receipt, so notify the claimant and the developer or general contractor, along with the reason or reasons that the claim is ineligible for an exemption.
- (4) All projects not yet placed in service shall submit to the department annual reports containing the following information:
 - (A) Project status, including, but not limited to, status of construction of affordable units; and
 - (B) Total amount of allowable construction costs, allowable development costs, and allowance financing costs accrued to date.
- (5) If the claimant is found to be an eligible rental project under these rules, the claimant shall enter into a regulatory agreement with the department to ensure the project's continued compliance with the applicable eligibility requirements set forth in section 201H-36, HRS, as follows:
 - (A) For moderate rehabilitation projects, a minimum term of five years following the completion of construction;
 - (B) For substantial rehabilitation projects, a minimum term of ten years following the completion of construction; or
 - (C) For new construction projects, a minimum term of thirty years from the date of issuance of the certificate of occupancy.
- (6) A project shall be exempt from the requirement set forth in subsection (5) if:
 - (A) The project is a participant in a government assistance program that requires the execution of a deed

restriction or other written agreement that restricts the use and operation of the project, and is recorded on the project for a term that meets or exceeds the lengths of the minimum terms set forth in subsection (5); or

- (B) The project is a for-sale project.
- (7) Within ten working days after recordation of the regulatory agreement in the bureau of conveyances of the state of Hawaii or the office of the assistant registrar of the land court of the state of Hawaii, as applicable, staff shall issue a certification for exemption (department of taxation form G-37) and shall forward the original of the certified claim form to the department of taxation.

In no event shall the department accept a claim for certification more than one year following the close of the claimant's taxable year for which the exemption is claimed. [Eff]
(Auth: HRS §§46-15.1, 237-29) (Imp: HRS §§46-15.1, 237-29, 201H-36)

§20-26-13 Application for certification of rents received in affordable rental housing projects.

The following requirements shall apply to requests for exemptions from general excise taxes for affordable rents received from affordable housing units in newly constructed or moderately or substantially rehabilitated rental housing projects:

- (1) The claimant shall annually complete and submit to the department a general excise tax exemption claim (department of taxation form G-37);
- (2) Along with the claim form, the claimant shall submit to the department the following information on the eligible housing project:
 - (A) A description of the eligible housing project, including the number of affordable housing units and the

- percent of AMI for which those units are affordable;
- (B) A schedule showing rents charged on all housing units providing verification that the lower income household tenants meet the income criteria necessary for the tax exemption and an audited income statement or a reconciliation of the department of taxation form G-49 for the claimant's project if provided for in the regulatory agreement;
 - (C) Authorization for the department to conduct on-site inspections of the project; and
 - (D) Any additional information necessary for the department to make a determination;
- (3) Upon receipt, staff of the department shall time stamp the claim form; and:
- (A) If the claimant is found to be eligible under these rules, staff shall issue a certification for exemption within thirty calendar days thereafter, and shall forward the original of the certified claim form to the department of taxation; or
 - (B) If a person or entity is found to be ineligible under these rules, staff shall, within thirty calendar days of receipt, so notify the claimant, along with the reason or reasons that the claim is ineligible for an exemption.

In no event shall the department accept a claim for certification more than three years following the close of the claimant's taxable year for which the exemption is claimed. [Eff _____]

(Auth: HRS §§46-15.1, 237-29) (Imp: HRS §§46-15.1, 237-29, 201H-36)

§20-26-14 Criteria for determining eligibility of projects. In approving or

disapproving a project for exemption from general excise taxes, the department shall determine whether:

- (1) The project is an eligible housing project under these rules; and
- (2) The project is consistent with any other requirements under the law or under this chapter.

The department may disapprove a project for exemption from general excise taxes if these criteria are not met. [Eff _____] (Auth: HRS §§46-15.1, 201H-36, 237-29) (Imp: HRS §§46-15.1, 201H-36, 237-29)

\$20-26-15 Substantial changes. If a contract for work on a certified project experiences substantial changes, the claimant must submit a revised, or amended, department of taxation form G-37 for certification by the department. This revised form G-37 must include the full amounts of the contract. A revised department of taxation schedule A to form G-37 must also be submitted, if applicable. For purposes of this section, "substantial changes" means changes of more than twenty per cent of the original contract amount, or more than \$200,000.

[Eff _____] (Auth: HRS §§46-15.1, 237-29 (Imp: HRS §§46-15.1, 201H-36, 237-29))

SUBCHAPTER 3

MISCELLANEOUS PROVISIONS

§20-26-21 Exemption for existing rental projects. The department may certify claimants for exemption of affordable rents of existing rental projects following a conveyance or transfer of ownership, provided that the following conditions are met:

- (1) The rental project was previously certified or approved for exemption from general excise taxes by the City, including any of its departments;

- (2) The rental project will continue to meet the income criteria of an existing eligible housing project, pursuant to a deed restriction or other written agreement that restricts the use and operation of the project, and is recorded on the project; and
 - (3) The claimant shall reapply for certification of the existing rental project.
- [Eff _____] (Auth: HRS §237-29)
(Imp: Imp: HRS §§46-15.1, 201H-36, 237-29,)

DEPARTMENT OF PLANNING AND PERMITTING

Title 20, Chapter 26, City and County of Honolulu Administrative Rules entitled "General Excise Tax Exemptions" were adopted on _____, 2022, following a public hearing held on _____, 2021, after public notice was given on _____. 2021, in the Honolulu Star-Advertiser; and a public hearing held on _____, 2022, after public notice was given on _____. 2022, in the Honolulu Star-Advertiser.

The foregoing rulemaking action shall take effect ten days after filing with the Office of the City Clerk.

DEAN UCHIDA, Director

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of
_____, 2022.

RICK BLANGIARDI, Mayor
City and County of Honolulu

CERTIFICATION

I, DEAN UCHIDA, in my capacity as Director of the Department of Planning and Permitting, do hereby certify that the foregoing is a full, true and correct copy of Title 20, Chapter 26, City and County of Honolulu Administrative Rules, entitled "General Excise Tax Exemptions" that was adopted on _____, 2022, following a public hearing held on _____, 2021, after public notice was given on _____, 2021, in the Honolulu Star-Advertiser and a public hearing held on _____, 2022, after public notice was given on _____, 2022, in the Honolulu Star-Advertiser.

DEAN UCHIDA, Director

Received this ____ day of
_____, 2022

City Clerk